

The following is a real-time transcript taken as closed captioning during the oral argument proceedings, and as such, may contain errors. This service is provided solely for the purpose of assisting those with disabilities and should be used for no other purpose. These are not legal documents, and may not be used as legal authority. This transcript is not an official document of the Florida Supreme Court.

**Waste Management, Inc. v. Rolando Mora, et al.
SC05-2024**

NEXT CASE ON THIS MORN ING'S DOCKET IS WASTE MANAGE MENT V ERSUS MISSOURIRA , AND I WANTED T O STATE -- VERSU S MORA, AND I WAN TED TO STATE FOR THE RE CORD THAT BOTH PARTIES AG REED FOR ME TO SITON THIS CASE.

AGR EED. THIS TR IAL IS A 3- DAY TRIAL. ISSUES OF LIABILITY AND DAMAGES WERE HO TLY CONT ESTED. A GREAT DEAL OF EVIDENCE CONTESTED CHALLENGING BOTH LIABILITY, CAUSEITION A -- CAUSATION AND DAMA GES. AT THE CONCLUSION OF THE T RIAL THE JURY CAME BACK WITH A 26 PERCENT ON THE PLAINTIFF , 33 PERCENT ON MY CLIENT, WASTE MANAGEMENT AND 56 PERCENT ON THE CLIENT'S EMPLOYER. THEY AWA RDED 22000 FOR FUTURE ECONOMIC DAMAGES AND \$56,000 FOR PAST EC ONOMIC DAMAGES AND ZERO FOR PAST AND Z ERO' OWE FOR F UTURE E CONOMIC . THE PLAINTIFF MO VES FOR A NEW TRIA L ON THE BASIS THAT THE VERDICT WAS INADEQUATE AND WE BE LIEVE IT WAS INADEQUATE, BA SE D UP ON THE HOLDING IN THE PLAINTIFF'S CASE.

JUSTICE: THE PLA I NTIFF DID NOT MOVE FOR AN ADATURE.

THAT'S CORR EC T.

JUSTICE: W HO MOVED FOR AN ADATURE?

NOBODY MOVED FOR AN ADATURE. AND IT IS MY UNDERSTA NDING THAT FOR AN ADATURE TO TAKE PLACE , ONLY A MOTION FOR A NEW TRIAL. I HAVEN'T FOUND A MOTION REQUESTED TO PLACE NOR ONE GRANTED.

CHIEF JUSTICE: IF THE COURT FIND S THAT THE AMOUNT IS EITHER EXCESSIVE OR IN KBAT, THAT ACTUALLY THE -- OR INADEQ UATE , THAT ACTUALLY THE COURT HAS T O ADD AN ADITUR? THE COURT DOESN'T VERY, VERY THE OPTION OF GRANTING A NEWTRIAL?

IF WE LOOK AT THE WO RDI NG OF 70.0 43 , THE FIRST WORDING THAT IS RELATIVE TO YOURQUESTION IS IF THE RESPONSIBILITY OF THE COURT , U PON PROPER MOT ION, TO REVIEW THE AMOUNT OF SUCH AWARD TO DETERMINE IF SUCH A MOUNT I S CLEARLY EXCE SSIVE OR INADEQ UATE IN LIGHT OF THE FACTS AND CIRCUMSTANCES WHICH WERE PRESENTED TO THETRIER OF FACTS. SO FIRST OF ALL THE STATUTE IMPOSES A RESPONSIBILITY TO THE TRIAL JUDGE TO RE VIEW AN INADEQUATE VERDICT, AND WE BOTH AGREED THE VERD ICT WAS INADEQUATE, B ASED O N THE EXISTING CASE LAW. THEN IT SAYS , LATER ON IN THE SAME PARAGRAPH , IF THECOURT FINDS THAT THE AMOUNT AWARD IS EXCESSIVE OR INADEQUATE, IT SHALL AWARD AN ADITURE, SO IN OURDECISION THAT IS A BU RDEN PLACED UPON THE COURT.

JUSTICE: IF THE COURT ORDERS AN ADD ITURE , THECOURT IS THEN DENYING THE MOTION FOR A NEW TRIAL.

THAT'S CORREC T.

JUSTICE: NOW I TAKE I T THAT AT THAT POINT THE PLAINTIFF CAN FILE AN APPEAL.

TH AT'S CORRECT .

JUSTICE: IN FACT THAT IS WHAT HAD PD IN THE DO WD Y CASE , CORRECT?

THAT'S CORRECT.

JUSTICE: AND THEN THE APPELLATE COURT , AGA IN THE FOURTH DISTRI CT, M A DE A DECISION AS TO WHE THER THE AMOUNT OF THE ADDITURE WAS A --

FAIR AND REASONABLE.

JUSTICE: - - A FAIR AMOUNT, THEN DECIDED IN DOWDY THAT ONE ADD I TOUR WAS AND ONE -- ADDITURE WAS AND ONE ADDITU RE FORM RE WAS IN -- ADDITURE WAS INADEQUATE. B UT BU DOESN'T THAT GET INTO THE FACT THAT EITHER THETRIAL COURT OR IN THAT INSTANCE THE AP PELLATE COURT, J UST MA KING A DECISION WHICH THERE IS IN FACT, A RIGHT TO HAVE A JURY MAK E?

WELL , IT IS AN INTERESTING QUESTION BECAUSE WE HAVE GO T ALL OF THESE CASES THAT WE HAVE CI TED IN OUR BRIEF REGARDING REMITATURE, WHERE IT IS GRANTED BY THE TRIAL JUDGE. FOR EXAMPLE A JURY COMES B ACK WITH A VERDICT THAT IS SO EXCESSIVE LIKE THE CO FFE IN THE LAB CASE, THEY DECIDED TO LOP OFF A PORTION OF THE VERDICT. HOW IS THAT SIGNIFICANTLY DIFFERENT FROM A JURY COMING BACK WITH ZERO AND HAVING A NUMBER ADDED ?

JUSTICE: IN EITHER ONE OF THESE CASES WAS IT UNILATERALLY I MPOSED BY THE TRIAL COURT AS OPPOSED TO A SPECIFIC RE MEDY RE QUESTED BY EITHER PARTY?

IT IS AN UNILATERAL REMEDY. ADDITURE AND REMITURE IS A REMEDY .

JUSTICE: IS NEW TRIAL AN ORDER FOR ADDITURE OR FOR REMITATURE?

SOME CASES SPECIFICALLY FOR A NEW TRIAL.

JUSTICE: IN YOUR EXA MPLE , WAS THE FACT THAT THE COURT MAKES A DETERMINATION, THAT THE VERDICT IS EXCESSIVE AND E NTERS , SAY, DETERMINES HA THERE SHOULD AND REMIT A TOUR -- REMITATURE FOR \$100,000 AND THE ADDITURE IS --

SPECIFICALLY IN A REMITATURE SIT UATION , I T IS THE PLAINTIFF THAT HAS --

CHIEF JUSTICE: AGAI N IN THAT SITUATION , IT IS YOUR POSITION THAT IT IS A TWO-WAY STREET, WHICH IS THAT IF A DEFENDANT ARGUES THAT THIS WAS A CLE ARLY EXCESSIVE VERDICT , NOTHING WRONG WITH THE LIABILITY PORTION , BECAUSE , AND THEY DON'T ASK FOR A REMITATURE , THEY WANT A NEW TRIAL ON DAMAGES, THE JUDGE UNDER THIS STATUTE HAS , IF THEY FIND THAT THE DAMA GES WERE EXCESSIVE, HAS NO OPTION TO GRANT A NEW TRIAL. THEY HAVE GOT TO FI GURE OUT A REMITATURE , AND THE DEFENDANT'S ONLY RECOURSE IF THE PLAINTIFF ACCEPTS THAT, IS TO APPEAL?

NO. I THINK --

CHIEF JUSTICE: THE AMOUNT?

I THINK THE TRIAL JUDGE DOES HAVE DISCRETION TO ORD A NEW TRIAL ON DAMAGES , TO FORE GO THE ADD TOUR OR REMITATURE -- THE ADDATURE OR REMITATURE IN THAT SITUATION.

CHIEF JUSTICE: IT SEEMSTO ME THAT THERE IS NO O PTION FOR THE TRIAL JUDGE , IF THE COURT FIND S THAT THE AMOUNT AWA RDED I S CLEA RLY EXCESSIVE OR INADEQ UATE, IT S HALL ORDER A REMITATURE OR ADDATURE .

IT DOES APPEAR TO BE A MANDATE BUT OBVIOUSLY WE HAVE HAD TRIAL JUDGES THAT IS HAVE ORDERED NEW TRIALS UNDER THE CIRCUMSTANCE, SO THE PROBLEM WITH THIS STATUTE AND THE CASE LAW INTERPRETING THIS STATUTE OVER THE LAST 25 YEARS, IS THAT IT IS ALL OVER THE PLACE. OKAY. WE HAVE SOME COURTS SAYING A PLAINTIFF HAS THE RIGHT TO REJECT AN ADDITURE. WE HAVE SOME COURTS SAYING THE PLAINTIFF DOESN'T HAVE A RIGHT. WE HAVE NO COURT SAYING THAT A DEFENDANT HAS A RIGHT TO REJECT A REMITTURE, SO BASICALLY WE HAVE GOT TRIAL JUDGES THAT DON'T KNOW WHICHWAY TO TURN.

CHIEF JUSTICE: WE HAVE INTERPRETED THE STATUTE AS BEING A SUBSTANTIVE STATUTE.

CORRECT.

CHIEF JUSTICE: SO WE ARE REALLY IN THIS CASE, DEALING WITH THE QUESTION OF STATUTORY CONSTRUCTIONS AND THEN SECOND OF ALL, ONCE WE CONSTRUCT IT THE WAY -- CONSTRUCTION AND THEN SECOND OF ALL, ONCE WE CONSTRUCT IT THE WAY WE SEE IT AS PROPER, THEN WE DETERMINE IF IT INTERFERES WITH EITHER THE PLAINTIFF OR DEFENDANT'S RIGHT TO TRIAL BY JURY. IS THAT CORRECT?

RIGHT.

CHIEF JUSTICE: SO UGH TERM THAT WE WOULD REALLY BE STRUGGLING WITH HERE IS ADVERSELY AFFECTED, CORRECT?

YES AND I WOULD DO THAT AS THE SECOND PART OF THE ARGUMENT. THE FIRST PART IS DOES THE TRIAL JUDGE HAVE THE DISCRETION TO ORDER AN ADDITURE IN A SITUATION WHERE WE ARE DEALING WITH NONECONOMIC DAMAGES.

CHIEF JUSTICE: OR WHERE IT HAS NOT BEEN ASKED FOR. HAS THAT BEEN A PART OF THE CONFLICT?

IT HASN'T.

CHIEF JUSTICE: HAS NOT?

IT HAS NOT BEEN BRIEFED THAT NOT BEEN DISCUSSED BEFORE. I WILL ADMIT THAT IT HAD OCCURRED TO ME BUT I WASN'T GOING TO RAISE THE ISSUE. I AM NOT AWARE OF ANY CASE LAW THAT SETS SAY IT IS REQUIRED TO -- THAT SAYS IT IS REQUIRED TO FILE A MOTION FOR ADDITURE OR REMITTURE.

CHIEF JUSTICE: IF THE AMOUNT IS INADEQUATE, FIRST OF ALL THE ATTORNEY DOESN'T ASK FOR IT AND THE AMOUNT IS INADEQUATE ACCORDING TO THE PLAINTIFF, SAY IT IS A THOUSAND DOLLARS AND IT WAS A MILLION DOLLAR CLAIM, WHY ISN'T THAT PARTY ADVERSELY AFFECTED? I GUESS THAT IS REALLY HOW THE FOURTH AND THE SECOND HAVE DIVERGED ON WHAT ADVERSELY AFFECTED MEANS.

IF WE LOOK AT, OBVIOUSLY WE HAVE GOT THE RULES OF STATUTORY CONSTRUCTION TALKING ABOUT IF THE PLAIN MEANING OF THE STATUTE IS CLEAR, WE SHOULD INTERPRET IT IN THAT FASHION. THE SENTENCE ACTUALLY READS, IF THE PARTY ADVERSELY AFFECTED BY SUCH REMITTURE OR ADDITURE DOES NOT AGREE, THE COURT SHALL ORDER A NEW TRIAL ON THE ISSUE OF DAMAGES ONLY. NOW, THE LEGISLATURE COULD VERY EASILY SAID IF EITHER PARTY DISAGREES WITH IT. IF ANY PARTY ADVERSELY AFFECTED. THEY CHOSE TO SAY IF THE PARTY ADVERSELY AFFECTED, AND JUST GIVING ITS SIMPLE MEANING, THE PERSON ADVERSELY AFFECTED BY AN ADDITURE IS AFFECTED, IT WOULD BE THE PLAINTIFF, ASKED TO BE PAID MORE MONEY.

JUSTICE: THE PARTY THAT RECEIVES \$1 WHEN THEY ASKED FOR \$1 MIL LION , THEY ARE ADVERSELY IMPACTED, ARE THEY NOT?

YOU CAN MAKE THAT ARGUMENT . JUST JUST DI D YOU DO ANY RESEARCH AS TO WHAT THE STATUS OF THE LAW WAS WHEN IT WAS PAS SED?

THE LAW I S CITED IN THEBRIEF. A NUMBER OF CASES.

JUSTICE: GOING BACK INT O THE 70s , THE RE WAS NO CASE IN FLOR IDA THAT E VEN GAVE YOU AN ADDATURE , CORRECT?

CORRECT.

JUSTICE: SO IT COMES DO WN BY COMMON LAW A REMITATURE CON CEPT AND WE DISCUSSED IN DICTA ABOUT THE CASES AND ADDATURE AND THE QUESTION WAS THERE WHETHER YOU EVEN HAD THESE KINDS OF THIN GS, AND WHY COUL DN'T YOU VIEW THE STATUTE AS A CODIFICAITON OF EXISTING LAW AND T ELL TRIAL JUDGE TO SAY USE THIS DISC RETION ACCORDING TO THE B ASIC PRESENTENCE THAT WE HAD FOLLOWED -- CEPTS THAT W E HAD HAD BEFORE - - PRE CEPTS THAT WE HAD HAD BEF ORE , ANDIF YOU DON'T WANT THE V ERDICT THAT YOU GOT UNDER ON TRIAL BY JURY , YOU CAN APPEAL, BUT WHY SHOULDN'T THE STATUTE BE INTERPRETEDIN THAT FASHION? IT GIVES EVERYBODY THE SAME KINDS OF RIGH TS AND GOES TOTHE PROBLEM THAT EXISTEDBACK IN ' 77 BECAUSE THAT WAS THE ISS UE BACK IN '77.

RIGHT. WELL, THE ARGUMENT COULD BE MADE THAT A PLAINTIFF DOES HAVE THE RIGHT UNDER T HOSE CIRCUMSTANCES TO CHALLENGE ADDATURE, BUT AT THIS P OINT THERE IS NOT HING SO SAYING EXCEPT FOR THE BRANT CASE , AND THE BRANT CASE CI TES THAT PR IOR CASE THAT YOU REFERRED TO , THE SARBUS CASE AND QU OTES FROM IT AND SAYS THAT RIGHT DID NOT EXIST AT COMMON YOU LAW. THIS WAS A REMEDIAL STATUTE. THAT ARGUMENT CAN CERTAINLY BE MA DE. THE ARGU MENT THAT WE MAKE INRESPONSE IS THIS PLAINTIFF DID HAVE A TRY RI OT TO TRIAL BY JURY AND THE JURY -- A RIGHT TO A TRIAL BY JURY AND THE JURY DEC IDED TO GIVE HIMNOTHING , AND NOW A LEARNED TRIAL JUDGE HAVING BEEN S ITING THER E AND H EARD THAT EVIDENCE, IS ALLOWED TO GIVE HIM WHAT HE BELIEVES THE PLAINTIFF IS ENTITLED TO. SHOULD THE PLAINTIFF BE ENTITLED TO A SECOND TRIAL BY JURY AS TO THE DAMAGES?

THAT IS AN ILLEGAL CIRCUMSTANCE. ARE YOU GOING TO SAY THATYOU HAVE BEEN AFFORDED YOUR RIGHT TO JURY TRIAL WITH AN ILLEGAL VERDICT. I DON'T THINK THERE IS ANY CASE LAW THAT SUPPORTS THAT , IS THERE. THAT IS REALLY WHAT IT IS.

THE SP ECIFIC CASE LAWTHAT HAS HE LD THAT SUCH A VERDICT IS NOT INCONSISTENT . IT IS NOT INCONSISTENT VER DICT.

JUSTICE: IT IS AN ILLEGAL ONE, IF YOU GIVE EVIDENCE OF IT AND NO CONTRARY EVIDENCE AND IT IS NOT IN DISPUTE, IT IS AN ILLEGAL VERDICT , ISN'TIT?

WELL , THERE WAS SIGNIFICANT EVIDENCE DISPUTING THE PLAINTIF F'S INJURIES AND CA USATION.

JUSTICE: SOUNDS LIKE FROM WHAT YOU ARE SAYING HERE, THAT YOU ARE LOOKING MORE FOR CLARITY THAN YOU ARE FORA PARTIC ULAR OUTCOME. MAYBE I AM MISSING THE C ENTER OF YOUR COMM ENTS , BECAUSE NOW WOULDN'T A TRIAL JUDGE CLEARLY, IN ENTERING A REMITATURE OR AN ADDATURE , HAVE TO AGREE WITH THE POSITION OF THE PARTY THAT WAS SEE KING A NEW TRIAL , THAT THE DAMAGES WERE CHREEFERL CLEARLY EXCESSIVE -- CLEARLY EXCESSIVE OR INADEQUATE, BEFORE DOINGTHAT? I MEAN , ISN'T THAT A PREDICATE TO DOING THAT TO BEGIN WITH?

YES. YES.

JUSTICE: AND AS JUSTICE LEWIS HAS SUGGESTED , Y E ARS A GO THE ONLY ALTERNATIVE WAS TO ADD , HAVE A NEW TRIAL. OKAY. WHEREAS IF WE WERE DEALING WITH SOMETHING, FOR IN STANCE, IF IT WAS PRO PERTY DAMAGE AND THE JUDGE SAID, WELL , YES , I AGREE WITH YOU THAT THE DAMAGES WERE INSUFFICIENT , BECAUSE CLEARLY THE CAR WAS WO RTH \$10,000 AND YOU PROVED THAT , AND SO I AM GOING TO GIVE YOU AN ADDATURE OF \$10,000 , THEN THE CONCEPT OF ADDATURE AND REMITATURE WOULD SERVE A VERY CONSTRUCTIVE PURPOSE, WOULD THEY NOT?

YE S.

JUSTICE: YOU KNOW , THAT , SO BUT THE IDEA THAT THE JUDGE AGREES , FOR EXAMPLE , WITH THE DAMAGES THAT T HEY WERE INADEQUATE BUT THEN S AYING I AGREE THAT THEY ARE INADEQUATE AND I AM JUST GOING TO GIVE YOU AWE TO KEN AWARD WHICH IS AL MOST VIRTUALLY THE SAME THINGTHAT WAS THERE, THE IDEA THAT YOU COULD NOT CONTINUE TO ADVANCE AFTER HAVING A JUDGE SORT OF AGREE WITH YOU , THAT IS ONLY PART OF YOUR ARG UMENT THAT I AM HAVING DIFFICULTY WITH, THAT IS THAT YOU ARE ST ILL CLEARLY NOT SATISFIED WITH THE AMOUNT OF THE DAMAGES.

WELL , THE RESPONSE TO THAT IS THAT PARTY DOES HAVE A RIGHT TO APPEAL FRBS THECOURT ABU SES ITS DISCRETION -- A PPEAL, I F THE COURT A BUSES ITS DISCRE TION AND ORDERS AN AMOU NT THAT IS TOO L OW.

JUSTICE: THE JUDGE IS DENYING A NEW TR IAL , O KA Y , AND PROV IDING WHAT, IN THE VIEW OF THE PLAINTIFF IS AN INADEQUATE ADDATURE , OKAY , BUT WHY SHOULD THERE HAVE TO BE AN APPEAL , IF W E CAN AVOID THAT BY A LIBERAL INTERPRETATION OF THE LANGUAGE OF THE STATUTE? WOULDN'T THAT TAKE AWAY SOME YEARS OF LITIGATION THAT PERHAPS WERE UNNECESSARY?

THE CORE LARRY IS THAT A WELL-REASONED -- THE COROLLARY IS THAT A WELL-REASONED TRIAL JUDGE DECISION MIGHT ELIMINATE THENEED TO RETRY THE CASE WITH A WELL-WRITTEN ADDATURE O R REMITATURE. THE PROBLEM IS BY GIVING B OTH SIDE S THE RIGHT TO REJECT IT , WE NEED TO HAVE THE TRIAL JUDGE WITH THE WISDOM OF SOLOMON AND AR RIVE AT A NUM BER THAT I S GOING TO PLEASE BOTH SIDES.

CHIEF JUSTICE: YOU ARE IN YOUR REBUTTAL BUT JUDGE CANTERO HAS A QUESTION.

IS IT YOUR MOTION THAT THE BASIS FOR A NEW TRIALWAS THAT THE JURY VERDICT WAS INADEQUA TE?

YES.

JUSTICE: THE PLAINTIFFDID NOT FILE A MOTION FOR ADDATURE. THE PLAINTIFF FIL ED A MOTION FOR NEW TRIAL, SO IF THE TRIAL JUDGE DETERMINED THAT THE PLAINTIFF WAS CORRECTTHAT THE VERDICT WAS INADEQUATE, WHY WASN'T THE PROPER PROCEDURE FOR THETRIAL COURT TO G RANT THE M OTION FOR NEW TRIAL?

IT IS OUR POSITION THAT THE ADDATURE AND REMITATURE STATUTE , 768.043 GIVES THE TRIAL COURT THE RIGHT TO GRANT AN ADDATURE OR REMITATURE, EVEN WHEN AMOTION FOR A NEW TRIAL IS F ILED .

JUSTICE: I UNDERSTAND THAT BUT IS THAT MUTUALLY EXCLUSIVE TO THE GROUNDS FORA NEW TRIAL, IF A PLAINTIFF SPECIFICALLY ASKS FOR A NEWTRIAL ON THE BASIS THAT A VERDICT WAS INADEQUATE , IS THE TRIAL JUDGE NOW PROHIBITED FROM G RANTING AMOTION FOR NEW

TRIAL?

WE FOUND NO SUCH CASE LAW FOR STAND FOR THAT PROPOSITION. THE ONLY THING THE STATUTE SAYS IS " UPON PROPER MOTION", AND IF WE LOOK AT THE RULES OF CIVIL PROCEDURE, THE ONLY POST TRIAL MOTION IS A MOTION FOR A NEW TRIAL. I WILL RESERVE THE REST FOR REBUTTAL.

CHIEF JUSTICE: THANK YOU. MR. WEISBERG.

THANK YOU. ONCE AGAIN GOOD MORNING. MY NAME IS MICHAEL WEISBERG. I AM HERE ON BEHALF OF ROBERTO MORA, THE PLAINTIFF IN THE LOWER COURT AND HERE THE APPEAL.

JUSTICE: MR. WEISBERG, WOULD YOU PICK UP ON YOUR OPPONENT'S LAST, TOWARD THE END OF THE ARGUMENT, WHICH SEEMS TO ME TO BE A POINT HERE, IS THAT IF WE, IF WE INTERPRET THE STATUTE AS YOU WOULD SUGGEST, THAT IN ESSENCE WE WOULD HAVE TO DO IT BOTH FOR THE PLAINTIFF AND THE DEFENDANT, WOULD YOU AGREE? BOTH ADDITURES AND REMITTURES SHOULD BE TREATED THE SAME.

I THINK THEY SHOULD BE TREATED THE SAME, AND I WOULD LIKE TO DISCUSS THE CIRCUMSTANCES OF WHY THEY ARE ACTUALLY DIFFERENT IN NATURE, BUT SHOULD BE TREATED AND DESCRIBED WHO THE DAMAGED PARTY IS. JUST BUT IF WE GO WITH THE CONCEPT --

JUSTICE: BUT IF WE GO WITH THE CONCEPT THAT, IF THE PARTY ADVERSELY AFFECTED IS THE PARTY WHO DOESN'T ESSENTIALLY AGREE WITH THE AMOUNT OF THE ADDITURE, THEN THAT MEANS THAT THE ADDITURE IS BASICALLY OR THE REMITTURE IS BASICALLY A STIPULATION, AND IF, AND SO IT REALLY, THE STATUTE KIND OF MEANS NOTHING.

I DON'T THINK IT DOESN'T MEAN ANYTHING, BECAUSE IT HAS PURPOSES. IF I HAD A CAR THAT WAS DAMAGED AND THE JURY CAME BACK AND AWARDED ME \$500 FOR THE CAR AND THE ONLY TESTIMONY WAS THAT THE CAR WAS WORTH \$600, THEN IN THAT CIRCUMSTANCE THE ADDITURE WAS \$100 WOULD PUT THE PLAINTIFF IN A DIFFICULT DECISION BECAUSE THAT WASN'T WHAT HE ASKED FOR.

JUSTICE: IN A TYPICAL SITUATION THE PERSON IS GOING TO SAY THE CAR IS WORTH \$900 SO I DON'T THINK THAT EXTRA HUNDRED BUCKS IS SUFFICIENT, SO I WANT A NEW TRIAL.

IT MAY VERY WELL BE WHAT THE EVIDENCE WAS AT THE TIME OF THE TRIAL THAT MAY MEAN WHETHER AN ADDITURE WOULD BE CORRECT, WHETHER IT WAS A PERSONAL DETERMINATION BY THE JURY OR NOT. IN THIS PARTICULAR CASE, I WANT TO MOVE AWAY FROM YOUR QUESTION, BECAUSE I AM AN OLD MAN. I WENT TO THE WAR -- I ENTERED THE BAR IN 1967 AND WE DIDN'T HAVE ADDITURES.

JUSTICE: BE CAREFUL. REMEMBER --

I ASSUME THAT SOME MEMBERS ARE OLDER THAN I AM AND THERE WAS A REASON WHY WE DIDN'T HAVE ADDITURES, AND WHEN WE PASSED THE STATUTE, THE STATUTE DIDN'T SAY THAT MR. WEISBERG, YOU HAVE TO FILE A MOTION FOR AN ADDITURE. IF YOU THINK THE VERDICT IS IMPROPER YOU MUST FILE THIS MOTION. IN FACT THE STATUTE SPECIFICALLY STATES, AND IT IS STATUTE NOT THE RULE, THAT UPON PROPER MOTION, NOBODY MADE A PROPER MOTION IN THIS CASE. NOBODY! THE ONLY MOTION THAT WAS MADE WAS BY THE PLAINTIFF FOR A NEW TRIAL, BECAUSE THE VERDICT WAS IMPROPER. NOT INCONSISTENT. THAT WOULD MEAN THAT THE WHOLE THING NEEDED TO BE RETRIED. THE ONLY ISSUE WAS THE PAIN AND SUFFERING ISSUES THAT EXISTED BEFORE THE VERDICT AND AFTER THE VERDICT, AND SINCE THE JURY DETERMINED THAT MR. MORA NEEDED MEDICAL CARE, WAS GOING TO MISS TIME FROM WORK, BOTH BEFORE AND AFTER, IT WAS ASSUMED -- ASSUMED BY THE COURTS AND CONSTRUED BY

THE COURTS THAT THERE WAS PAIN AND SUFFERING RELATED TO THE PLAINTIFF'S CLAIM, SO HE ASKED THE JURY --

JUSTICE: LET ME ASK AS TO STATUTORY INTERPRETATION, THE PARTY ADVERSELY AFFECTED SEEMS TO ME TO BE USED IN NOT JUST THIS STATUTE BUT IN SEVERAL STATUTES THAT I HAVE SEEN. I DIDN'T SEE THAT EITHER PARTY IN THEIR BRIEFS, DISCUSS HOW COURTS HAVE INTERPRETED THAT TERM AS TO OTHER STATUTES AND WHETHER IT REALLY , DOES IT GRANT ANY PARTY WHO FEELS THAT PARTY IS ADD ADVERSELY AFFECTED -- ADVERSELY AFFECTED FROM APPEALING. IN OTHER WORDS WHO EVER WANTS TO APPEAL IT CAN APPEAL IT OR IS IT SPECIFIC TO SOME EFFECT THAT IT HAS ON A PARTY?

IN MY DISCUSSIONS, I DON'T SEE ANY GENERALIZATION OF A LEGAL PRINCIPLE THAT CAN BE USED TO DETERMINE WHO THE ADVERSELY AFFECTED PARTY IS. IS THE ADVERSELY AFFECTED PARTY JUST ONE THAT DISAGREES WITH IT, THAT ECONOMICALLY IT COSTS THEM SOMETHING OR DISAGREES WITH WHAT THEY MAY THINK THE REASONABLE JUROR WOULD DETERMINE THE VALUE OF A CLAIM BASED UPON THE EVIDENCE THAT WAS SUBMITTED TO THEM? IN THIS PARTICULAR CASE, THE COURT SHOULD UNDERSTAND WHAT HAPPENED IN THIS CASE. THE VERDICT CAME IN LATE IN THE EVENING .

CHIEF JUSTICE: LET'S GO BACK TO BEFORE THE SPECIFICS HERE.

I AM SORRY.

CHIEF JUSTICE: THE PARTY ADVERSELY AFFECTED BY SUCH REMITTURE OR ADDATURE , WE ARE DEALING WITH STATUTORY CONSTRUCTION.

CORRECT.

CHIEF JUSTICE: AND I AM HAVING A HARD TIME UNDERSTANDING IF WE BRING TO GIVE MEANING TO THE IDEA THE WORDS "IF THE PARTY ADVERSELY AFFECTED BY SUCH REMITTURE OR ADDATURE" , IF IT WAS TO REFER TO EITHER PARTY, WHY WOULDN'T IT , THE LEGISLATURE HAVE JUST SAID IF EITHER PARTY DOES NOT AGREE, THE COURT SHALL ORDER A NEW TRIAL. THERE IS NO REASON TO ADD ON THE LANGUAGE "ADVERSELY AFFECTED", IF EITHER PARTY HAS A RIGHT TO REJECT IT. CAN YOU TELL US --

I AGREE WITH YOU. I DON'T KNOW WHY THEY DID IT .

CHIEF JUSTICE: SO THEN WHAT IS YOUR --

I DON'T KNOW HOW TO TELL THE COURT WHY, WHAT WAS THE DETERMINATION MADE AT THAT TIME OR WHAT WAS THE DECISION WHEN THEY WROTE THE STATUTE , WHAT THEIR UNDERSTANDING WAS AS TO ADVERSE FINDING.

CHIEF JUSTICE: WE DON'T LOOK AT WHAT MAYBE BEHIND, IN THEIR MINDS, BUT WE DO HAVE A RULE OF STATUTORY CONSTRUCTION THAT SAYS THAT EVERY WORD IN A STATUTE SHOULD BE GIVEN A FULL EFFECT, AND THAT IS WHERE I AM HAVING A PROBLEM IN YOUR INTERPRETATION OF IF THE PARTY ADVERSELY AFFECTED COULD BE EITHER PARTY.

IN OUR BRIEF , MR . MOREBERG ATTEMPTED TO ANSWER THAT QUESTION OF THE STATUTORY INTERPRETATION. IF THE STATUTORY INTERPRETATION IS INTENDED TO DETERMINE THE CONSTITUTIONALITY OF THE STATUTE , IN OTHER WORDS THE ENFORCEABILITY OF THE STATUTE AS TO THE EXISTENCE OF THE CONSTITUTION AT THE TIME, IN THIS PARTICULAR CASE, IF YOU SAY MR . MORA CANNOT HAVE A TRIAL BY JURY BECAUSE OF THE EDIT , HE HAS BEEN REMOVED FROM THAT CONSTITUTIONAL RIGHT TO HAVE A RETRIAL.

CHIEF JUSTICE: EXCEPT WHAT YOU WOULD HAVE UNDER THE EARLIER FOURTH DISTRICT OPINION AND THE THIRD DISTRICT OPINION IS THE RIGHT TO APPEAL THE ADEQUACY OF THE JUDGMENT AND THEN IF THE APPELLATE COURT AGREES WITH YOU, THEN THERE WOULD BE A REVERSAL, YOU WOULD GET YOUR TRIAL.

WELL, I KNOW THAT THE SUPREME COURT CASE, THE HARVEY CASE USES THE WORD ALTERNATIVE, USES THE WORD ALTERNATIVE REMEDY NOT AN EXCLUSIVE REMEDY, BUT AS FAR AS YOUR PARTICULAR QUESTION IS CONCERNED, MY UNDERSTANDING OF WHAT THE PURPOSE OF THE SUPREME COURT, THE RIGHT TO A JURY TRIAL TO EXIST FOR MR. MORA IN THIS PARTICULAR CASE, THAT IF THEY BROUGHT A VERDICT BACK IN THAT MAY NOT BE TO TALLY IN AGREEMENT WITH EVERYBODY, MAYBE SOME PEOPLE COULD THINK IT IS WORTH MORE, BUT WORTHLESS. MAYBE A JUDGE UNDER THOSE CIRCUMSTANCES MAY WANT TO GRANT AN ORDER OF REVERSAL. IN THIS PARTICULAR CASE, IN THE MORA CASE, HE GOT ZERO FOR SOMETHING THAT HE SHOULD HAVE BEEN AWARDED DAMAGES FOR.

CHIEF JUSTICE: JUST I WANT TO GO BACK TO YOUR PRIOR POINT, AND THIS WOULD BE, MEAN THE CASE MIGHT NOT BE IN CONFLICT. YOU ARE ALSO LOOKING AT THE MEANING OF THE TERM "UPON PROPER MOTION".

CORRECT.

CHIEF JUSTICE: AGAIN, ARE YOU ADVANCING THE ARGUMENT THAT, IF THE PARTY, WHOEVER IT IS THAT IS ASKING FOR RELIEF, DOES NOT ASK FOR THE REMEDY OF JUDGMENT OR IN THE ALTERNATIVE NEW TRIAL, THAT THE COURT, THAT THIS, THE NEXT COUPLE OF LINES DOES NOT EVEN APPLY AT ALL?

CORRECT.

CHIEF JUSTICE: ALL RIGHT. SO IF THAT WERE THE CASE, THAT, BUT THAT IS NOT HOW THE FOURTH DISTRICT RESOLVED THE CASE.

NO, THEY DID NOT. THEY ACTUALLY WENT BACK AND WENT THROUGH THE BRANT CASE BEFORE AND THIS CASE.

CHIEF JUSTICE: DID YOU RAISE THAT ARGUMENT AS THE FIRST ARGUMENT? THAT IS THAT THERE WAS NEVER A PROPER MOTION, SO THIS STATUTE NEVER CAME --

IT WASN'T RAISED IN THE FOURTH DISTRICT INITIALLY. IT IS IN THE BRIEF IN THE FOURTH DISTRICT, BUT I NEVER ASKED FOR IT.

JUSTICE: BUT IN YOUR MOTION, EVEN THOUGH YOU ASKED FOR A NEW TRIAL, IN YOUR MOTION DID YOU SAY THAT THE VERDICT WAS INADEQUATE? BY USING THAT TERM, AREN'T YOU THEN BASICALLY SAYING WHAT THE STATUTE IS TALKING ABOUT, WHICH IS THAT IF IT IS INADEQUATE OR EXCESSIVE, THEN YOU GET TO THE NEXT STEP.

I BELIEVE WE WROTE IT WAS IMPROPER. I DON'T KNOW IF IT WAS INADEQUATE. LET'S ASSUME THAT I DID WRITE IT WAS INADEQUATE. IT STILL DIDN'T GIVE THE JUDGE IN MY OPINION, THE AUTHORITY TO PUT HIMSELF IN AS THE SEVENTH JUROR IN THIS CASE.

CHIEF JUSTICE: I WANT TO, I WANT TO MAKE SURE DID YOU RAISE THE ARGUMENT IN THE FOURTH DISTRICT THAT A PROPER MOTION WOULD MEAN A MOTION THAT INCLUDED A REQUEST FOR AN ORDER OF REVERSAL [.

NO. THE ONLY THING WE RAISED IN THE FOURTH DISTRICT WAS THAT WE SOUGHT A NEW TRIAL AND NEVER ASKED FOR AN ORDER OF REVERSAL.

JUSTICE: ISN'T THAT THE SAME THING? DID YOU SAY THAT? YOU NEVER ASKED FOR IT.

CORRECT.

JUSTICE: I DON'T UNDERSTAND. ARE WE PLAYING SEMANTICS.

I THOUGHT THE COURT WAS ASKING DID I ASK FOR AN ADDATURE.

CHIEF JUSTICE: I AM ASKING DID YOU MAKE AN ARGUMENT IN YOUR BRIEF AND AN ARGUMENT THAT A PROPER MOTION WOULD MEAN A MOTION THAT , AFTER AN ADDATURE , THAT THERE CAN'T BE AUTHORITY FOR THE COURT JUST TO GRANT AN ADDATURE OR REMITATURE, UN LESS THE PARTY ASKS FOR IT. I AM NOT SAYING THAT --

IN THE BRIEF WE RAISED THAT ISSUE , THAT WE NEVER ASKED FOR AN ADD T O UR.

CHIEF JUSTICE: AND THEREFORE IT WAS NOT A PROPER MOTION.

THERE FOR IT WOULD BE IMPROPER TO ISSU E AN ADDATURE. C HIEF WE WILL LOO K AT THE BRIEF. --

CHIEF JUSTICE: WE LOOK AT THE BRIEF.

JUSTICE: CAN WE GO PAST THAT BECAUSE I THINK THE LAW WAS THAT YOU COULD GET A REMITATURE, EVEN IF YOU DIDN'T FI LE A MOTION, SO ARE WE LOOKING AT THIS STATUTE AS CREATING A DIF FERENT CRITERIA?

IF I KN EW THE ANSWER, IN MY OPINION Y ES, BECAUSE I THINK THERE IS AN HISTORICAL DIFFERE NCE

CHIEF JUSTICE: SIR , EXCUSE ME . IF YOU WANT TO , EITHER HAVE COME UP BEFORE --

THERE IS A HISTORICAL DIF FERENCE BETWEEN THEM , AND THE FACT THAT THEY BECAME INCLUSIVE WITHIN THE STATUTE , DOESN'T REALLY ANSWER THE QUESTION WHETHER THE HISTORICAL DIFFERENCE S TILLEXIST.I THINK THEY EXIST , BECAUSE FAILURE TO GIVE MR . MORA THE OPPORTUNITY TO TRY HIS CASE , IS A LOT DIFFERENT THAN TELL ING A DEFE NDANT THE JURY S A ID YOU O WED \$100,000 AND NOW WE ARE GO ING TO SAY YOU OWE 50,000. THAT IS A BIG DIFFER ENCE IN SCENARIO . THANK YOU.

THE ARGUMENT THAT WE DISCUSSED BEFORE ABOUT THE PROPERTY DAMAGE TO THE CAR AND THAT BEING A BETTER DAMAGES THAT THE COURT COULD GRANT AN ADDATURE , DOE SN'T WORK WITH THE STATUTE, BECAUSE THE STATUTE SAYS THAT IT APPL IES IN ANY ACTION FOR THE RECOVERY OF DAMAGES BASED O N PERSONAL INJURY . SO WHEN WE CONS IDER WHETHER WE ARE GOING TO RE NDER THIS STATUTE COMPLETELY IN APPLICABLE BECAUSE OF A JUDGE NOT HAVING THE AUTHORITY TO GRANT AN ADDATURE, IT ONLY APPL IES TO UNLIQUIDATED DAMAGES. IT IS TA LKING AB OU T DAMAGES ARISING OUT OF PERSONAL INJURY. AS FAR AS THE COURT , JUSTICE LEWIS 'S CONCERN THAT THE LAW BEFORE WAS DIFFERENT AND WE SHOULD TRY TO FIND AN INTERPRETATION THAT COMPORTS WITH THAT PRIOR LAW , SUBPARAGRAPH 3 OF SE CTION 768.043 ACTUALLY SETS FORTH THE LEGISLATIVE INTENT , AND IT SAYS --

JUSTICE: LET ME GO BACK TO YOUR ARGUMENT OF JUST A MINUTE AGO . RECOGNIZING THAT WE ARE DEALING WITH PERS ONAL IN JU RY AND DAMAGES AND INTANGIBLE P ERSONAL INJURY DAMAGES. AND WE E ND UP WITH A SITUATION IN WHICH , IF YOU ARE GOING TO A LLOW THE COURT TO SET THE AM OUNT OVER THE OBJECTION OF THE PLAINTIFF , AREN'T YOU NECESSARILY T AKING THAT ISSUE WHICH IS EVERY INSTANCE A QUESTION FOR THE ENLIGHTEN ED JUDG MENT OF THE JURY, AWAY F ROM THE JURY? AND SO THEREFORE THAT WE WOULD HAVE T O GET THIS

STATUTE AN UNCONSTITUTIONAL CONSTRUCTION.

WELL , WE HAVE GOT TWO PRIOR DECISIONS BY THESUPREME COURT . ITT HART FORD AND ADAMS VERSUS WR IGH T , THAT HAVE HELD THE STATUTE CONSTITUTIONAL.

CHIEF JUSTICE: BUT NOT ON THIS ISSUE .

NOT ON THIS ISSUE. GETTING BACK TO MY P OINT , THE LEGISLATIVE INTENT INDICATES IT IS THE INTENT OF THIS LEGISLATURE TO VEST THE TRIAL COURTS OF THIS STATE WITH THE DISCRETIONARY AUTHORITY TO RE VIEW THEAMOUNTS OF DAMAGES AW ARD BY A TRIER OF FACT, IN L IGH T AFTER STA NDARD OF INADEQUA CY OR EXCESSIVENESS AND I REVERSED THOSE TWO WORDS. THE LEGISLATURE RECOGNIZES THAT THE REASON ABLE ACTIONS OF A JURY ARE A FUNDAMENTAL PRESENT OF AM ERICAN JUR IS-- PRECEPT OF AME RICAN JURISPRUDENCE AND THAT SHOULD BE DISTURBED OR MOD F ILED ONLY WITH -- OR MODIFIED WITH CAUTIONARY DISCRETION. HOWEVER , IT IS REV IEWED BY THE STANDARDS SET FORTH IN THIS SECTION , PROVIDES A SUPPORT OF SOUNDNESS AND LOGIC TO OUR JUDICIAL SYSTEMAND IS IN THE BEST INTEREST OF THE CITIZENS OF THE STATEOF FL ORIDA.

JUSTICE: LET ME ASK YOU A PROCEDURAL QUESTION.WHEN THE VERDICT CAME BACK AND IT WAS PRESENTED TO COUNSEL IN COURT , WAS THE ISSUE RAISED BY COUNSEL AT THE TIME ON THE LEGAL INSUFFICIENCY?

NO. THE LEGAL ISSUE WAS RAISED AFTER THE JURY WAS DISCHARGED. MR. WEIS BERG ST OOD UP AFTER THE JURY WAS DISC HARGED AND SAID, YOUR HONOR, I HAVE A MOTION.

JUSTICE: BUT THERE WAS AN OPPORTUNITY BEFORE THAT TO OBJECT AND HAVE THE JURY DECIDE THIS.

THERE WAS BUT IT WASN'T RAISED. S O OUR PO SITION IS ON THE LEGISLATIVE INTENT WAS IT WAS THE LEGISLATURE'S INTENT TO FORE GO THE PRIOR CASE LAW , SAYING THAT A JURY TRIAL HADTO HAVE BEEN H ELD, AND THAT GIVING THE TRIAL COURT DISCRETION TO DO THAT.

CHIEF JUSTICE: THANK YOUVERY MUCH. THE COURT WILL TAKE THIS MATTER UNDER ADVISEMENT AND BE IN REC ESS UN TIL 9:00 A.M. TOMORROW MORNING.

MARSHAL: PLEASE RISE.